

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael King T3	Team: Team # 3	CCRB Case #: 200705138	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 04/08/2007 4:15 AM	Location of Incident: East 138th Street and Park Avenue	Precinct: 40	18 Mo. SOL 10/8/2008	EO SOL 10/8/2008	
Date/Time CV Reported Tue, 04/10/2007 2:52 PM	CV Reported At: IAB	How CV Reported: Fax	Date/Time Received at CCRB Fri, 04/13/2007 1:43 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christoph Crain	03856	933719	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Gianfranco Rubino	09001	933300	040 PCT
2. SGT Dewkoemar Mohan	04563	920622	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christoph Crain	Abuse: PO Christopher Crain damaged § 87(2)(b) s property at 2520 Park Avenue in the Bronx.	
B.POM Christoph Crain	Off. Language: PO Christopher Crain made remarks to § 87(2)(b) based upon race at the 40th Precinct station house.	

Synopsis

§ 87(2)(b) filed this complaint with the NYPD Internal Affairs Bureau (IAB) on April 10, 2007 under IAB log number 07-13650. The complaint was forwarded to the CCRB on April 13, 2007.

At 4:15 AM on April 8, 2007, § 87(2)(b) was drinking a beer inside of the Sin City bar located at 2520 Park Avenue in the Bronx after the bar had closed. PO Christopher Crain and PO Gianfranco Rubino responded to the location in order to conduct a business inspection. PO Crain questioned § 87(2)(b) who claimed to be a member of the NYPD. PO Crain requested § 87(2)(b)'s identification, though § 87(2)(b) refused to provide it. PO Crain arrested § 87(2)(b) for impersonation. § 87(2)(b) alleged that PO Crain damaged § 87(2)(b)'s necklace in the process of arresting him (allegation A). PO Crain transported § 87(2)(b) to the 40th Precinct stationhouse for arrest processing. § 87(2)(b) alleged that PO Crain called § 87(2)(b) a "drug-dealing Spic" inside the stationhouse (allegation B).

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Former Inv. Edward Hughes and former Inv. Michelle DeLia conducted the investigation of this complaint. The case was assigned to Inv. Michael King on February 12, 2008 for case closing.

Summary of Complaint

§ 87(2)(b) (*enclosure E1-E4*)

§ 87(2)(b) is a 5'9" 190-pound § 87(2)(b) old Hispanic male with brown hair. The CCRB interviewed § 87(2)(b) on May 2, 2007. His statements are summarized with differences between them noted.

At approximately 4:00 AM on April 8, 2007, § 87(2)(b) was at the Sin City bar at 2520 Park Avenue in the Bronx with a group of friends. § 87(2)(b) had arrived at the club at approximately 1:30AM and had been drinking since that time. § 87(2)(b) estimated that he drank 4 or 5 Corona beers prior to the incident. At one point, there were six officers in uniform inside the club standing near the doorway and bar. § 87(2)(b) ordered a beer for \$9 from an unidentified female bartender. After taking one sip from the beer, he noticed the lights had started to come on. PO Christopher Crain (identified by the investigation) was standing on the east side of the bar, approached § 87(2)(b) and told him that he could not be drinking after 4:00AM in a bar in New York State. § 87(2)(b) told the officer that he did not know what time it was, but asked if he could finish the beer since he had just paid \$9 for it. The officer threatened to arrest § 87(2)(b). In his initial statement to IAB, § 87(2)(b) claimed that he responded to the officer's threat of arrest by telling the officer that he should arrest the bar for selling him the drink; he made no mention of this in his CCRB statement. § 87(2)(b) attempted to calm the situation down by mentioning to the officer that he served in the military and would appreciate a "break." (He did not indicate to IAB that he told the officers he was a member of the military until they were at the stationhouse.) The officer asked § 87(2)(b) for identification and § 87(2)(b) provided his New York State driver's license. § 87(2)(b) did not have a military identification card with him and PO Crain told him that he was placing him under arrest for impersonating a military person. PO Crain grabbed § 87(2)(b) by the collar with one hand and as he pulled him, the officer's hand broke § 87(2)(b) gold necklace. The necklace fell off § 87(2)(b) neck and fell into his shirt. PO Crain placed § 87(2)(b) in a marked vehicle and checked his information in the computer. PO Crain then drove § 87(2)(b) to the 40th Precinct station house and processed the arrest. On the way to the holding cell and approximately 6-7 feet from the cell, PO Crain said to § 87(2)(b) "You are nothing more than a drug dealing 'spic.'" A female white officer with black hair was standing to the left of the desk officer and may have heard PO Crain's comment. A group of prisoners that were also arrested at the same club were also standing nearby. PO Crain then placed § 87(2)(b) in the holding cell and walked away. There was no further contact between PO Crain and § 87(2)(b). In his IAB statement, § 87(2)(b) claimed that PO Crain called him a "faggot" while at the bar, but he made no such allegation to the CCRB.

Results of Investigation

Attempts to locate witnesses (enclosure K2-K3)

On July 31, 2007, the CCRB contacted the Sin City bar and spoke with its manager, who identified himself only as “§ 87(2)”. The manager was not present for the incident, but indicated that he would speak to his employees working at the time and then contact the CCRB the following day with their contact information. “§ 87(2)” provided his personal cell phone number at the time of the call. “§ 87(2)” did not contact the CCRB on the following day. On August 3, 2007, the CCRB contacted “§ 87(2)” to schedule an appointment on August 6, 2007 at the bar to interview witnesses. “§ 87(2)” indicated that he would contact the CCRB on August 6, 2007 to confirm the appointment; he never called. On August 7, 2007, the CCRB contacted “§ 87(2)” who informed the investigator that any interviews would have to be conducted after 8:00 PM. “§ 87(2)” then informed the investigator to call him back that same day between 4:00 and 4:30 PM, at which time he would provide a list of witnesses. The CCRB called “§ 87(2)” at 4:30 PM, but received “§ 87(2)(b)” voicemail. A message was left requesting that “§ 87(2)” return the call and provide the CCRB with contact information for witnesses. The CCRB also attempted to reach “§ 87(2)” on August 14, 2007 and left another message requesting that “§ 87(2)” provide the CCRB with the contact information. “§ 87(2)” never returned any of the calls from the CCRB. As a result, no contact information from possible witnesses was obtained and no additional civilian statements were obtained.

PO Christopher Crain (enclosure F1-F10)

PO Crain, 5’7” 170-pound § 87(2)(b)-old white male with brown/red hair, had the following memo book entries. At 3:52 AM, PO Crain responded to a 10-61 at 2520 Park Avenue. At 4:13 AM, he made one arrest. At 4:20 AM, PO Crain was present at the stationhouse. At 4:23 AM, PO Crain noted that \$1172.05 in United States Currency was vouchered and \$99.05 was returned. At 4:45 AM, PO Crain prepared the arrest report.

PO Crain prepared the complaint and arrest reports regarding this incident. PO Crain charged § 87(2)(b) with one count of § 87(2)(a) 160.50. No physical force was used to affect the arrest. In the details section, PO Crain stated the following: “§ 87(2)(a) 160.50.” PO Crain listed § 87(2)(b)s physical condition as being “intoxicated – alcohol.”

PO Crain was interviewed at the CCRB on August 22, 2007. On April 8, 2007, PO Crain was assigned to patrol with PO Gianebanco Rubino in a marked RMP during the first tour. According to PO Crain, he and PO Rubino responded to the bar Sin City as directed by the stationhouse regarding a business inspection. Once there, PO Crain overheard § 87(2)(b) (described by PO Crain as a 5’7” 170-pound+ 20-30 year old Hispanic male) arguing with the management of the bar. § 87(2)(b) refused to empty his beer, stating that it was expensive. PO Crain indicated that he believed that bars typically closed their doors at 3:40 AM and then directed patrons to leave at 4:00 AM. The bar was crowded at that time, though people had started to exit the premises. PO Crain approached § 87(2)(b). § 87(2)(b) stated to PO Crain that he was “on the job,” meaning that he too was a police officer. PO Crain asked § 87(2)(b) for his identification, but he refused to provide any. PO Crain then told § 87(2)(b) that it was time to go and took the beer out of § 87(2)(b)s hand. § 87(2)(b) objected by saying that he did not have to leave; he then requested a sergeant to the scene. PO Crain called over the sergeant at the scene, Sgt. Mohan. PO Crain informed the sergeant of what was occurring. Sgt. Mohan instructed § 87(2)(b) to provide his identification. § 87(2)(b) refused again and then told the officers to “forget it,” that it was “not a big deal.” § 87(2)(b) refused three or four more times to provide his identification, at which point PO Crain and Sgt. Mohan arrested him. § 87(2)(b) did not resist the arrest and no physical force was used to affect the arrest. PO Crain denied breaking § 87(2)(b)s necklace and denied there was any kind of struggle. PO Crain also denied speaking discourteously to § 87(2)(b) at any point or using any offensive language. He also denied that any other officers used offensive language towards § 87(2)(b). PO Crain and PO Rubino transported § 87(2)(b) to the 40th Precinct stationhouse and PO Crain processed the arrest.

PO Gianfranco Rubino (enclosure G1-G5)

PO Rubino, a 5'5" 145-pound § 87(2)(b) old white male with brown hair, had the following memo book entries. At 3:52 AM, PO Rubino responded to a business inspection at 2522 Park Avenue. At 4:13 AM, PO Crain made one arrest.

PO Rubino was interviewed at the CCRB on September 7, 2007. § 87(2)(g)

According to PO Rubino, the officers' responsibilities during the business inspection were to check identification at the bar and also make sure that no drinks were served after 4:00 AM. Customers were leaving the bar at 4:00 AM and the lights had been turned on. The bouncers of the bar called PO Crain and PO Rubino over to them, informing the officers that § 87(2)(b) was refusing to leave. The officers then approached § 87(2)(b) who appeared to be intoxicated and was yelling obscenities. PO Rubino recalled § 87(2)(b) stating, "Do I have to show my badge to get respect around here?" PO Crain then asked § 87(2)(b) for his identification several times, though § 87(2)(b) refused to provide it. § 87(2)(g)

He denied that PO Crain grabbed § 87(2)(b)'s necklace, damaging it in the process. He also denied that any officers used offensive language towards § 87(2)(b) at any time.

Sgt. Dewkoemar Mohan (enclosure H1-H5)

Sgt. Mohan, a 5'11" 210-pound § 87(2)(b) old Hispanic male with black hair, had the following memo book entries. At 4:00 AM, he conducted a business inspection at Sin City bar located at 2520 Park Avenue. At 4:30 AM, he resumed patrol.

Sgt. Mohan was interviewed by the CCRB on February 8, 2008. On April 8, 2007, Sgt. Mohan was assigned as the first tour patrol supervisor. PO Wendell Hinds was his operator and the officers used a marked RMP. Sgt. Crain's statement differed from those of PO Crain and PO Rubino in claiming that he had no interaction with § 87(2)(b) prior to PO Crain arresting and handcuffing § 87(2)(b). According to Sgt. Mohan, he was outside of the establishment when PO Crain brought § 87(2)(b) to him in handcuffs. PO Crain informed Sgt. Mohan that § 87(2)(b) claimed to be a police officer, but did not produce any identification when asked. Sgt. Mohan claimed that he was not present for the arrest and did not witness it. He provided no additional details.

NYPD Records (enclosure I1-I7)

The 40th Precinct command log indicated that PO Crain presented to the command desk at 4:30 AM. § 87(2)(b)'s physical condition was listed as "apparently normal/intoxicated."

PO Crain N601515, which listed the property vouchered from § 87(2)(b) cell phone, cell phone battery, cell phone clip, and keys).

Disposition of Criminal Case (enclosure J1)

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Criminal Conviction History (enclosure J1-J17)

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian CCRB History (enclosure B2)

This is the fifth complaint filed by § 87(2)(b) § 87(2)(b)

Officer CCRB History (enclosure B1)

PO Crain has no substantiated CCRB allegations in his four years with the NYPD.

Conclusions and Recommendations

Officer Identification

§ 87(2)(b)'s allegations were all against the officer who first approached him and subsequently arrested him. PO Crain confirmed that he first approached § 87(2)(b) and subsequently arrested him. All of the allegations are being pleaded against him.

Undisputed Facts

Officers conducted a business inspection at the Sin City bar at approximately 4:00 AM on April 8, 2007. New York State law prohibits the sale of alcoholic beverages after 4:00 AM and prohibits the consumption of alcoholic beverages at a licensed premise after 4:30 AM. PO Crain requested § 87(2)(b)'s identification, but § 87(2)(b) did not provide it. PO Crain arrested § 87(2)(b).

Disputed Issues

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Assessment of Evidence

It should be noted that § 87(2)(b) admitted to drinking 4-5 beers from 1:30 AM to the time of this incident (4:15 AM). He denied being intoxicated, though PO Crain and PO Rubino described him as being intoxicated. The 40th Precinct command log and the arrest report also listed § 87(2)(b) as being intoxicated. § 87(2)(g)

[REDACTED]

PO Crain denied that any physical force was used to affect the arrest. § 87(2)(b) claimed that the officer grabbed him by the back collar and while doing so, caused the chain of his necklace to break. The officer then handcuffed him without further incident. § 87(2)(g)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g)
§ 87(2)(b) initially stated to IAB that PO Crain called him a “faggot” and “drug-dealing Spic” at the scene of the arrest. To the CCRB, though, § 87(2)(b) claimed that PO Crain called him a “drug-dealing Spic” in the stationhouse; he made no allegation that PO Crain called him a “faggot.” Nonetheless, the primary form of the allegation remained constant: namely, that PO Crain referred to § 87(2)(b) as a “drug-dealing Spic.” PO Crain denied the allegation, § 87(2)(g)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegations Not Pleaded

No threat of arrest allegation is being pleaded. According to New York state law/alcoholic beverage control section 106 (enclosure A1-A2), establishments with liquor licenses are prohibited from selling any alcoholic beverages to patrons after 4:00 AM. The same provision of New York State law also indicates “nor shall any person be permitted to consume any alcoholic beverages upon any such premises later than one-half hour [4:30 AM] after the start of the prohibited hours of sale provided for in this section.” § 87(2)(g)

§ 87(2)(g) PO Crain’s understanding of the law was such that the bar closed at 4:00 AM with a final call occurring at 3:40 AM and this was his basis for approaching § 87(2)(b) aside from the claim that § 87(2)(b) was arguing with the bar management. § 87(2)(g)

Allegation A. Abuse of Authority – PO Christopher Crain damaged § 87(2)(b)’s property at 2520 Park Avenue in the Bronx.

§ 87(2)(g) No injury was sustained. PO Crain denied that he damaged § 87(2)(b)’s necklace during the arrest and § 87(2)(b) did not provide evidence of the damaged necklace to the CCRB either via photograph or presenting the actual necklace at the time of his interview. § 87(2)(g)

Allegation B. Offensive Language – PO Christopher Crain made remarks to § 87(2)(b) based upon race at the 40th Precinct station house.

§ 87(2)(g)

Investigator:	Date:
Supervisor:	Date:
Reviewed by:	Date:
Reviewed by:	Date: